

Medicines and medical appliances are not taxed at the general State rate of 6.25%. These items are taxed at a lower State rate of 1%. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

December 31, 2007

Dear Xxxxx:

This letter is in response to your letter dated August 10, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC manufactures and sells medical prosthetic, orthopedic, orthotic devices, and medical instruments primarily to hospitals, surgical centers and veterinarians. We are requesting a letter ruling regarding our PRODUCT product line and whether they qualify for the sales and use tax exemption as a prostheses, orthopedic, or orthotic medical appliance.

Under prevailing business practices, a hospital would not submit a prescription to any vendor of prosthetic devices. One of the key reasons for this is compliance with federal provisions regarding the nondisclosure of individually identifiable health information contained in the Health Insurance portability and Accounting Act of 1996 ('HIPAA'). The prescriptions for these products are part of the operative notes in the patient's files. Also, we would not require a prescription, since our products are regulated by the FDA and are shipped containing a label which states: 'Caution: Federal law restricts this device to sales by or on the order of a physician.'

The following is a description of the product, and other general information concerning the product: Technical information was provided by MD.

The PRODUCT come in several different shapes and sizes, thus allowing for use in supporting fractures in the arms and legs. The PRODUCT is composed of pins screwed into the bone, which is attached to an external rod or tube that can be adjusted to various angles. The PRODUCT correct the deformity created by the fracture and supports [sic] the bone during healing. They are used primarily with open fractures. The amount of time that this implant would remain attached to the body is from a couple of

days (removed to use a different implant) to the entire period for which the injury takes to heal. For you [sic] convince [sic] I have attached several brochures which describe how the PRODUCT are used.

If you have any questions, or need additional information, please do not hesitate to contact me. Thank you for reviewing our request and we await your determination.

#### **DEPARTMENT'S RESPONSE:**

For useful information regarding the taxation of food, drugs, medicines and medical appliances, I refer you to the Department's regulation at 86 Ill. Adm. Code 130.310. Products that qualify as medicines, drugs, or medical appliances under the regulation are taxed at the reduced rate of 1% plus applicable local taxes. Those that do not qualify for the low rate are taxed at the State rate of 6.25%, plus applicable local taxes.

The definition of a medical appliance is "an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the human body." Please note that 86 Ill. Adm. Code 130.310(c)(2) provides that medical appliances may be prescribed by licensed health care professionals for use by a patient, purchased by health care professionals for the use of patients, or purchased directly by individuals. Examples of items that qualify for the reduced rate for medical appliances are such items as artificial limbs, dental prostheses and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines (including the dialyzer). As a general proposition, diagnostic, treatment, and rehabilitative equipment items do not qualify for the reduced rate of tax as medical appliances because such items are not "for use in directly substituting for a malfunctioning part of the body," 86 Ill. Adm. Code 130.310(c)(2).

Braces that provide support only, such as Ace bandages and athletic-type braces, generally do not qualify for the low rate of tax. Braces that actually restrict mobility and impair the function of the body part being braced may qualify. Please note that sales to veterinarians do not qualify for the low rate of tax. See 86 Ill. Adm. Code 130.310(c)(2).

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive exemption identification numbers (an "E" number). See 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Organizations that are recognized as nonprofit under Internal Revenue Code Section 501(c)(3), are not necessarily exempt organizations pursuant to Illinois tax law. Such organizations must obtain an Illinois "E" number to qualify. Please be aware that only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters  
Associate Counsel